

ORDER OF THE DEPARTMENT OF COMMERCE

CREATING RULES

The Wisconsin Department of Commerce proposes an order to repeal Comm 5.80 (5) (b); 5.81 (4) (b); 47.30 (1) (b) 5., (2) (a) 1., 3., 4., 8., and 11. to 13., (c) 3., (d) (intro.), 1., 2., 6., and 8., and (e) 3; 47.32; 47.33 (1) (a) 2.; 47.336; 47.35; 47.405 to 47.41; and 47.42 (3) (b);

to renumber Comm 5.80 (5) (a) 1. and 2.; 5.81 (4) (a) 1. and 2.; 47.025 (6); 47.30 (1) (b) 6., (3), and (4); 47.33 (1) (a) 3.; 47.415; 47.42 (3) (a); and 47.42 (3) (a);

to renumber and amend Comm 5.80 (4) (intro.), (a), and (b); 47.30 (1) (intro.) and (a), (2) (a) 2., 5. to 7., 9., 10., 14., and 15, (d) 3. to 5. and 7., and (e) 4.; 47.355 (3) (b); and 47.42 (3) (c) to (e);

to amend Comm 5.003 (32m); 5.01 (1) Note; 47.015 (24) and (32); 47.025 (1) (b); 47.10 (1) (a) (intro.); 47.12 (1) (intro.) and (4); 47.30 (1) (b) 2. and 4., and (5) (intro.) and (a); 47.305 (1) (b) 3. and 4., and (g) 1.; 47.31 (2); 47.33 (1) (a) 1. and (5) (b); 47.335 (3) (c) 1.; 47.337 (2) (a) to (c); 47.339 (1) (intro.) and (2); 47.355 (2) (c) (intro.), 2., and 4. to 8.; 47.36 (1); subchapter V (title); and 47.42 (2) (g);

to repeal and recreate Comm 47.0258 (2) to (5), 47.115 (3), 47.13 Note, 47.30 (2) (h) to (k), 47.337 (4) and (5), 47.34, 47.37, and 47.40;

and to create Comm Table 5.02, line 46a; Table 5.06 line 46a; 5.10 (1) (a) 12.; 5.80 (1) (a) Note, (b) 5., (2) (c) and (d), (4) (a) 2. and 3., (b), and (c), and (5) (c); 5.805; 5.81 (1) (a) Note, (2) (c), and (4) (c); 47.015 (8) Note, (9) Note, and (27) Note; 47.02 (4); 47.025 (3) Note; 47.12 (1) (j) and (k); 47.30 (3); 47.305 (1) (b) 5. and Note, and 6. and Notes; 47.325; 47.33 (5) (c); 47.339 (4); 47.355 (2) (d) 3. and Note, and 4. to 7., (e), and (3) (b) 1. Note, 2., and 3.; 47.42 (2) Note and (3) (a) 2.; 47.54; 47 subchapter VII; and 47 Appendix section A—47.325; relating to Petroleum Environmental Cleanup Fund awards and associated credentials.

ANALYSIS OF PROPOSED RULES

Statutory Authority and Statutes Interpreted

Statutory Authority: ss. 101.143, 101.144, and 227.11 (2) (a) Stats., and s. 9110 (3yu) (c) of 1999 Wisconsin Act 9

Statutes Interpreted: ss. 101.143 and 101.144 Stats.

Summary

Under sections 101.143, 101.144, and 227.11 (2) (a) of the Wisconsin Statutes, the Department protects public health, safety, and welfare by promulgating rules for and administering the Petroleum Environmental Cleanup Fund (PECFA fund). The purpose of the PECFA fund is to reimburse property owners for eligible costs incurred because of a petroleum product discharge from a storage system or home oil tank system. Under section 9110 (3) (c) of 1999 Wisconsin Act 9, the Department is required to promulgate new rules that implement a usual-and-customary-cost schedule for items which are commonly associated with claims for reimbursement from the fund.

The Department's current rules for the PECFA fund are contained in chapter Comm 47. The proposed changes to Comm 47 would primarily (1) update the Department's criteria for reimbursing costs for cleanup of properties contaminated by petroleum product discharges, to be consistent with several statutory changes that have occurred after corresponding portions of this chapter were either established or revised; and (2) implement various improvements to the PECFA administrative and regulatory processes.

The major elements of these changes consist of (1) establishing Certified PECFA Program Managers, who would be responsible for managing the financial aspects of all PECFA projects; (2) codifying the Department's competitive public bidding process, and applying it to both existing and newly reported sites, in a prioritized manner that addresses the highest and most costly threats to human health and the environment first; and (3) establishing a usual and customary cost schedule, which would control costs for most of the work not covered by the public bidding process, such as for low-cost sites.

Federal Programs

The PECFA program was originally created in response to the federal Environmental Protection Agency's requirement that all underground storage tank system owners have the financial means to clean up any contamination caused by a leak from those systems. However, PECFA no longer provides that financial protection for newly installed tank systems, and therefore there are no existing federal regulations which impact on how the PECFA program operates. No proposed federal regulations are known that would likewise impact the PECFA program.

Programs in Adjacent States

Of the four adjacent states, only Minnesota and Illinois are operating programs similar to the PECFA program. Some of the information the Department used in drafting the proposed rules for usual and customary costs and for public bidding was obtained from the current rules in place in Minnesota. Due to a financial shortfall, Illinois is only in the early stages of restarting their program, after years of little to no activity.

Data Sources and Fiscal Impacts

A variety of sources were used to gather data to establish the new rules and corresponding cost schedule for usual and customary costs, and the proposed rules for public bidding. The

Department contacted other states with similar programs and was provided with feedback on experiences in similar circumstances. The Department also surveyed stakeholders in the current program, asking for feedback; and consulted with an external advisory committee to assist in drafting the proposed rules.

Data collected to determine what costs are usual and customary indicates that the businesses which are participating in the PECFA program are able to provide the necessary services at the levels proposed in the corresponding cost schedule. Among the sources that were used to gather this data were the Department's current bidding process, current invoices for these services, a survey of the participating firms and commodity service providers, staff with consulting experience, and RSMeans Environmental Cost Data.

File reference: Comm 47/Analysis